

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
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CHAPTER 211

HOUSE BILL 2558

AN ACT

AMENDING SECTIONS 41-1092.02, 41-1959 AND 46-457, ARIZONA REVISED STATUTES;
AMENDING TITLE 46, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
SECTIONS 46-458 AND 46-459; RELATING TO ADULT PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1092.02, Arizona Revised Statutes, is amended to
3 read:

4 41-1092.02. Appealable agency actions; application of
5 procedural rules; exemption from article

6 A. This article applies to all contested cases as defined in section
7 41-1001 and all appealable agency actions, except contested cases with or
8 appealable agency actions of:

- 9 1. The state department of corrections.
- 10 2. The board of executive clemency.
- 11 3. The industrial commission of Arizona.
- 12 4. The Arizona corporation commission.
- 13 5. The Arizona board of regents and institutions under its
14 jurisdiction.
- 15 6. The state personnel board.
- 16 7. The department of juvenile corrections.
- 17 8. The department of transportation.
- 18 9. The department of economic security except as provided in sections
19 8-506.01, and 8-811 AND 46-458.
- 20 10. The department of revenue regarding income tax, withholding tax or
21 estate tax or any tax issue related to information associated with the
22 reporting of income tax, withholding tax or estate tax.
- 23 11. The board of tax appeals.
- 24 12. The state board of equalization.
- 25 13. The state board of education, but only in connection with contested
26 cases and appealable agency actions related to applications for issuance or
27 renewal of a certificate and discipline of certificate holders pursuant to
28 sections 15-203, 15-534, 15-534.01, 15-535, 15-545 and 15-550.
- 29 14. The board of fingerprinting.

30 B. Unless waived by all parties, an administrative law judge shall
31 conduct all hearings under this article, and the procedural rules set forth
32 in this article and rules made by the director apply.

33 C. Except as provided in subsection A of this section:

34 1. A contested case heard by the office of administrative hearings
35 regarding taxes administered under title 42 shall be subject to the
36 provisions under section 42-1251.

37 2. A final decision of the office of administrative hearings regarding
38 taxes administered under title 42 may be appealed by either party to the
39 director of the department of revenue, or a taxpayer may file and appeal
40 directly to the board of tax appeals pursuant to section 42-1253.

41 D. Except as provided in subsections A, B, E, F and G of this section
42 and notwithstanding any other administrative proceeding or judicial review
43 process established in statute or administrative rule, this article applies
44 to all appealable agency actions and to all contested cases.

1 E. Except for a contested case or an appealable agency action
2 regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09
3 do not apply to the department of revenue.

4 F. The board of appeals established by section 37-213 is exempt from:

5 1. The time frames for hearings and decisions provided in section
6 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.

7 2. The requirement in section 41-1092.06, subsection A to hold an
8 informal settlement conference at the appellant's request if the sole subject
9 of an appeal pursuant to section 37-215 is the estimate of value reported in
10 an appraisal of lands or improvements.

11 G. Auction protest procedures pursuant to title 37, chapter 2, article
12 4.1 are exempt from this article.

13 Sec. 2. Section 41-1959, Arizona Revised Statutes, is amended to read:
14 41-1959. Confidential information; permissible disclosure;

15 rules; violation; classification

16 A. Unless otherwise provided by law, all personally identifiable
17 information concerning any applicant, claimant, recipient, employer or client
18 or concerning any person involved in an adult protective services action,
19 OTHER THAN A PERPETRATOR AGAINST WHOM AN ALLEGATION OF ABUSE, NEGLECT OR
20 EXPLOITATION HAS BEEN SUBSTANTIATED PURSUANT TO SECTION 46-458, is
21 confidential and shall not be released unless ordered by a superior court
22 judge or provided for by rule of court except as provided in subsections B, C
23 and D of this section. Records and files that relate to investigations
24 conducted by child protective services in the department are confidential.
25 The department shall release this information only as prescribed by section
26 8-807.

27 B. Employees of the department of economic security, the department of
28 law and the court may obtain the information described in subsection A of
29 this section in the performance of their duties as authorized by rules
30 adopted by the director.

31 C. Employees of the department of economic security, the department of
32 law and the court may release any information which is otherwise held
33 confidential under this section under any of the following circumstances:

34 1. To the applicant, claimant, recipient, employer or client if a
35 request is made in writing by any of such persons specifically requesting
36 information which directly relates to the person requesting such information.

37 2. To the extent necessary to make claims on behalf of a client for
38 public or private assistance, insurance or health or medical assistance
39 pursuant to title 11, chapter 2, article 7 or title 36, chapter 29 to which
40 the client may be entitled.

41 3. In oral and written communications involving the provision of
42 services or the referral to services between employees of, persons under
43 contract with, or persons holding a general employment relationship with the
44 department of economic security, the department of law or the juvenile court.

1 4. If the disclosure of otherwise confidential information is
2 necessary to protect against a clear and substantial risk of imminent serious
3 injury to a client.

4 5. To agencies of the federal government, this state or any political
5 subdivision of this state for official purposes. All information received by
6 a governmental agency pursuant to this paragraph shall be maintained as
7 confidential, except where pertinent to a criminal prosecution.

8 6. To foster parents and persons certified to adopt if necessary to
9 assist in the placement with or care of a child by such persons.

10 7. To an officer of the superior court, the department or any agency
11 required to perform an investigation pursuant to section 8-105 if the
12 information is pertinent to the investigation. All information received by
13 the officer, department or agency pursuant to this paragraph may be disclosed
14 to the court but shall otherwise be maintained as confidential.

15 8. In any judicial or administrative proceeding involving an adult
16 protective services client if the director of the department considers the
17 information pertinent to the proceeding.

18 D. Notwithstanding the provisions of sections 8-519, 8-541, 8-542 and
19 46-135, a standing committee of the legislature or a committee appointed by
20 the president of the senate or the speaker of the house of representatives
21 may obtain the information described in subsection A of this section on
22 written notification to the director. Information obtained pursuant to this
23 subsection may be used only for purposes of conducting investigations related
24 to legislative oversight of the department. Information which is personally
25 identifiable shall not be further disclosed.

26 E. Any violation of this section is a class 2 misdemeanor.

27 F. The department shall establish safeguards against the unauthorized
28 use or disclosure of confidential information in title IV-D cases.

29 Sec. 3. Section 46-457, Arizona Revised Statutes, is amended to read:

30 46-457. Elder abuse central registry; mandatory reporting;
31 release of information

32 A. A person who files an action under this article shall serve notice
33 and one copy of the pleading with the attorney general within thirty days
34 after the action is filed in the superior court. The notice shall identify
35 the action, the person against whom the civil complaint has been filed and
36 the THAT person's attorney. The person WHO FILES AN ACTION is responsible
37 for submitting a report on the final disposition of the case within thirty
38 days after the final action is taken.

39 B. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, a state agency
40 OTHER THAN ADULT PROTECTIVE SERVICES that renders an administrative decision
41 that substantiates the allegation of abuse or that files a civil action that
42 alleges abuse, neglect or financial exploitation pursuant to this article or
43 title 36 shall serve notice and one copy of the administrative decision or
44 pleading with the attorney general within thirty days after the

1 administrative decision is rendered or within thirty days after the action is
2 filed in the superior court. The agency is responsible for submitting a
3 report on the final disposition of the case within thirty days after the
4 final action is taken. ADULT PROTECTIVE SERVICES SHALL REPORT ITS FINDINGS
5 TO THE REGISTRY ESTABLISHED PURSUANT TO SECTION 46-459. THE DEPARTMENT OF
6 ECONOMIC SECURITY SHALL NOT PROVIDE THE NOTICE PRESCRIBED IN THIS SUBSECTION
7 FOR INFORMATION MAINTAINED IN THE ADULT PROTECTIVE SERVICES REGISTRY PURSUANT
8 TO SECTION 46-459.

9 C. If the victim of the offense is an incapacitated or vulnerable
10 adult, a person who files a criminal complaint or indictment involving a
11 violation of this article or section 13-1102, 13-1103, 13-1104, 13-1105,
12 13-1201, 13-1203, 13-1204, 13-1303, 13-1304, 13-1403, 13-1404, 13-1406,
13 13-1802, 13-1807, 13-2002, 13-2310 or 13-3623 shall submit a copy of the
14 criminal complaint or indictment to the attorney general within thirty days
15 after arraignment. Within thirty days of the date of issuance of the minute
16 entry the court shall endorse to the attorney general a copy of the
17 sentencing minute entry or the minute entry reflecting the case has been
18 dismissed or a judgment of acquittal has been entered. The attorney general
19 shall develop guidelines to implement this subsection.

20 D. The attorney general shall maintain a registry containing the names
21 of persons pursuant to subsection A, B or C of this section with the date the
22 action was filed with the superior court or the date the administrative
23 decision was rendered, the dates of the conduct set forth in the complaint,
24 the indictment or decision, the general nature of the complaint, indictment
25 or decision and the disposition of the complaint, indictment or decision, if
26 known.

27 E. The information maintained pursuant to subsection D of this section
28 is available to the public on written request to the custodian of the
29 registry.

30 F. A person may submit a written statement on that person's own behalf
31 to the custodian of the registry. The statement is part of the records for
32 distribution in response to all inquiries concerning that person.

33 G. A person or agency that distributes information in the registry in
34 good faith is not subject to civil or criminal liability.

35 Sec. 4. Title 46, chapter 4, article 1, Arizona Revised Statutes, is
36 amended by adding sections 46-458 and 46-459, to read:

37 46-458. Hearing process; definitions

38 A. AFTER COMPLETING ITS INVESTIGATION, THE DEPARTMENT SHALL NOTIFY A
39 PERSON WHO IS ALLEGED TO HAVE ABUSED, NEGLECTED OR EXPLOITED A VULNERABLE
40 ADULT THAT THE DEPARTMENT INTENDS TO ENTER A SUBSTANTIATED FINDING OF ABUSE,
41 NEGLECT OR EXPLOITATION IN THE REGISTRY AND OF THAT PERSON'S RIGHT:

42 1. TO RECEIVE A COPY OF THE REPORT CONTAINING THE ALLEGATION AND
43 FINDINGS.

1 2. TO A HEARING BEFORE ENTRY INTO THE REGISTRY PURSUANT TO SECTION
2 46-459.

3 B. THE DEPARTMENT SHALL SEND THE NOTICE PRESCRIBED IN SUBSECTION A OF
4 THIS SECTION BY FIRST CLASS MAIL NOT MORE THAN FIFTEEN CALENDAR DAYS AFTER
5 COMPLETION OF THE INVESTIGATION.

6 C. A REQUEST FOR A HEARING ON THE PROPOSED FINDING MUST BE RECEIVED BY
7 THE DEPARTMENT WITHIN FIFTEEN CALENDAR DAYS OF THE NOTICE DATE.

8 D. IF A REQUEST FOR A HEARING IS MADE PURSUANT TO SUBSECTION C OF THIS
9 SECTION, THE DEPARTMENT SHALL NOTIFY THE REPORTING SOURCE, THE VULNERABLE
10 ADULT AND THE VULNERABLE ADULT'S REPRESENTATIVE OF RECORD AND CONDUCT A
11 REVIEW BEFORE THE HEARING. THE DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR
12 THE ACCUSED PERSON TO PROVIDE WRITTEN OR VERBAL INFORMATION TO SUPPORT THE
13 POSITION THAT THE DEPARTMENT SHOULD NOT SUBSTANTIATE THE ALLEGATION AND AN
14 OPPORTUNITY FOR THE REPORTING SOURCE, THE VULNERABLE ADULT AND THE VULNERABLE
15 ADULT'S REPRESENTATIVE OF RECORD TO RESPOND TO THE INFORMATION PROVIDED BY
16 THE ACCUSED PERSON. IF THE DEPARTMENT DETERMINES THAT THE ACCUSED PERSON DID
17 NOT ENGAGE IN THE ALLEGED CONDUCT BY A PREPONDERANCE OF THE EVIDENCE, THE
18 DEPARTMENT SHALL AMEND THE INFORMATION OR FINDING IN THE REPORT AND SHALL
19 NOTIFY THE PERSON, AND A HEARING SHALL NOT BE HELD.

20 E. NOTWITHSTANDING SECTION 41-1061, SUBSECTION B, THE NOTIFICATION
21 PRESCRIBED IN SUBSECTION A OF THIS SECTION SHALL ALSO STATE THAT IF THE
22 DEPARTMENT DOES NOT AMEND THE INFORMATION OR FINDING IN THE REPORT AS
23 PRESCRIBED IN SUBSECTION D OF THIS SECTION WITHIN SIXTY DAYS AFTER IT
24 RECEIVES THE REQUEST FOR A HEARING THE PERSON HAS A RIGHT TO A HEARING UNLESS
25 EITHER:

26 1. THE PERSON IS A PARTY IN A CIVIL, CRIMINAL OR ADMINISTRATIVE
27 PROCEEDING IN WHICH THE ALLEGATIONS OF ABUSE, NEGLECT OR EXPLOITATION ARE AT
28 ISSUE.

29 2. A COURT OR ADMINISTRATIVE LAW JUDGE HAS MADE FINDINGS AS TO THE
30 ALLEGED ABUSE, NEGLECT OR EXPLOITATION.

31 F. IF THE DEPARTMENT DOES NOT AMEND THE INFORMATION OR FINDING IN THE
32 REPORT AS PRESCRIBED IN SUBSECTION D OF THIS SECTION, THE DEPARTMENT SHALL
33 NOTIFY THE OFFICE OF ADMINISTRATIVE HEARINGS OF THE REQUEST FOR A HEARING NOT
34 LATER THAN FIVE DAYS AFTER COMPLETION OF THE REVIEW. THE DEPARTMENT SHALL
35 FORWARD ALL RECORDS, REPORTS AND OTHER RELEVANT INFORMATION WITH THE REQUEST
36 FOR HEARING WITHIN TEN DAYS AFTER THE REQUEST IS MADE. THE DEPARTMENT SHALL
37 REDACT THE IDENTITY OF THE REPORTING SOURCE BEFORE TRANSMITTING THE
38 INFORMATION TO THE OFFICE OF ADMINISTRATIVE HEARINGS.

39 G. THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL HOLD A HEARING PURSUANT
40 TO TITLE 41, CHAPTER 6, ARTICLE 10, WITH THE FOLLOWING EXCEPTIONS:

41 1. A VULNERABLE ADULT WHO IS THE VICTIM OF OR A WITNESS TO ABUSE,
42 NEGLECT OR EXPLOITATION IS NOT REQUIRED TO TESTIFY AT THE HEARING.

1 2. THE IDENTITY OF THE REPORTING SOURCE OF THE ABUSE, NEGLECT OR
2 EXPLOITATION SHALL NOT BE DISCLOSED WITHOUT THE PERMISSION OF THE REPORTING
3 SOURCE.

4 3. THE REPORTING SOURCE IS NOT REQUIRED TO TESTIFY.

5 4. A WRITTEN STATEMENT FROM THE REPORTING SOURCE MAY BE ADMITTED IF
6 THE TIME, CONTENT AND CIRCUMSTANCES OF THAT STATEMENT ARE SUFFICIENTLY
7 INDICATIVE OF ITS RELIABILITY.

8 5. IF THE PERSON REQUESTING THE HEARING FAILS TO APPEAR, THE HEARING
9 SHALL BE VACATED AND A SUBSTANTIATED FINDING OF ABUSE, NEGLECT OR
10 EXPLOITATION SHALL BE ENTERED. ON GOOD CAUSE SHOWN, THE HEARING MAY BE
11 RESCHEDULED IF THE REQUEST IS MADE WITHIN FIFTEEN CALENDAR DAYS AFTER THE
12 DATE OF THE NOTICE VACATING THE HEARING FOR FAILURE TO APPEAR.

13 H. ON COMPLETION OF THE PRESENTATION OF EVIDENCE, THE ADMINISTRATIVE
14 LAW JUDGE SHALL DETERMINE WHETHER THE DEPARTMENT'S FINDING THAT THE ACCUSED
15 ENGAGED IN THE ALLEGED CONDUCT IS SUPPORTED BY A PREPONDERANCE OF THE
16 EVIDENCE. IF THE ADMINISTRATIVE LAW JUDGE DETERMINES THERE IS INSUFFICIENT
17 EVIDENCE TO SUSTAIN THE DEPARTMENT'S BURDEN OF PROOF, THE ADMINISTRATIVE LAW
18 JUDGE SHALL ORDER THE DEPARTMENT TO AMEND THE INFORMATION OR FINDING IN THE
19 REPORT.

20 I. NOTWITHSTANDING SECTION 41-1959, THE DEPARTMENT SHALL NOTIFY THE
21 PERSON WHO IS THE SUBJECT OF THE INVESTIGATION AND THE PERSON WHO REPORTED
22 THE ALLEGATIONS OF ABUSE, NEGLECT OR EXPLOITATION OF THE OUTCOME OF THE
23 INVESTIGATION AT ONE OF THE FOLLOWING TIMES:

24 1. AT THE CONCLUSION OF THE INVESTIGATION IF THE REPORT IS
25 UNSUBSTANTIATED OR IF, BY A PREPONDERANCE OF THE EVIDENCE, THERE IS REASON TO
26 BELIEVE THE ALLEGATION DID OCCUR BUT NO PERPETRATOR HAS BEEN IDENTIFIED.

27 2. AFTER THE TIME TO REQUEST A HEARING HAS LAPSED PURSUANT TO
28 SUBSECTION C OF THIS SECTION WITHOUT THE DEPARTMENT RECEIVING A REQUEST FOR A
29 HEARING.

30 3. AFTER A FINAL ADMINISTRATIVE DECISION HAS BEEN MADE.

31 J. ALL FINAL DECISIONS SUBSTANTIATING AN ALLEGATION OF ABUSE, NEGLECT
32 OR EXPLOITATION SHALL BE REPORTED TO THE ADULT PROTECTIVE SERVICES REGISTRY,
33 PURSUANT TO SECTION 46-459, WITHIN THIRTY DAYS AFTER THE DECISION IS
34 RENDERED.

35 K. ANY PERSON RECEIVING INFORMATION PURSUANT TO THIS SECTION SHALL
36 MAINTAIN ITS CONFIDENTIALITY AS PROVIDED BY SECTION 41-1959, SUBSECTION A.

37 L. THIS SECTION APPLIES ONLY TO THOSE ALLEGATIONS OF ABUSE, NEGLECT OR
38 EXPLOITATION RECEIVED BY THE DEPARTMENT ON OR AFTER JULY 1, 2007.

39 M. THE DEPARTMENT IS EXEMPT FROM THE RULE MAKING REQUIREMENTS OF TITLE
40 41, CHAPTER 6 FOR THE PURPOSES OF IMPLEMENTING THIS SECTION.

41 N. FOR THE PURPOSES OF THIS SECTION:

42 1. "AMEND THE FINDING" MEANS TO CHANGE THE FINDING FROM SUBSTANTIATED
43 TO UNSUBSTANTIATED.

1 2. "AMEND THE INFORMATION" MEANS TO CHANGE INFORMATION IDENTIFYING THE
2 ACCUSED OF HAVING ABUSED, NEGLECTED OR EXPLOITED A VULNERABLE ADULT.

3 3. "FINAL DECISION" MEANS A DECISION FOR WHICH THE TIME TO APPEAL HAS
4 EXPIRED OR FROM WHICH NO FURTHER APPEAL IS AVAILABLE.

5 46-459. Adult protective services registry

6 A. THE DEPARTMENT OF ECONOMIC SECURITY SHALL MAINTAIN A REGISTRY OF
7 SUBSTANTIATED REPORTS OF ABUSE, NEGLECT AND EXPLOITATION OF VULNERABLE ADULTS
8 MADE PURSUANT TO SECTION 46-458. THE DEPARTMENT SHALL INCORPORATE DUPLICATE
9 REPORTS ON THE SAME INCIDENT IN THE ORIGINAL REPORT AND SHALL NOT CLASSIFY
10 DUPLICATE REPORTS AS NEW REPORTS.

11 B. THE REGISTRY SHALL CONTAIN THE NAME AND DATE OF BIRTH OF THE PERSON
12 DETERMINED TO HAVE ABUSED, NEGLECTED OR EXPLOITED A VULNERABLE ADULT, THE
13 NATURE OF THE ALLEGATION MADE AND THE DATE AND DESCRIPTION OF THE DISPOSITION
14 OF THE ALLEGATION. THE NAMES OF THE VULNERABLE ADULT AND REPORTING SOURCE
15 SHALL NOT BE REPORTED TO THE REGISTRY.

16 C. THE DEPARTMENT SHALL MAINTAIN A REPORT IN THE REGISTRY FOR TEN
17 YEARS AFTER THE DATE OF ENTRY.

18 D. THE DEPARTMENT SHALL ANNUALLY PURGE REPORTS AND INVESTIGATIVE
19 OUTCOMES RECEIVED PURSUANT TO THE TIME FRAMES PRESCRIBED IN SUBSECTION C OF
20 THIS SECTION.

21 E. ANY PERSON WHO WAS THE SUBJECT OF AN ADULT PROTECTIVE SERVICES
22 INVESTIGATION MAY REQUEST CONFIRMATION THAT THE DEPARTMENT HAS PURGED
23 INFORMATION ABOUT THE PERSON PURSUANT TO SUBSECTION D OF THIS SECTION. ON
24 RECEIPT OF THIS REQUEST, THE DEPARTMENT SHALL PROVIDE THE PERSON WITH WRITTEN
25 CONFIRMATION THAT THE DEPARTMENT HAS NO RECORD CONTAINING IDENTIFYING
26 INFORMATION ABOUT THAT PERSON.

27 F. INFORMATION MAINTAINED PURSUANT TO SUBSECTION B OF THIS SECTION
28 SHALL BE MADE AVAILABLE TO THE PUBLIC ON WRITTEN REQUEST. THE DEPARTMENT MAY
29 CHARGE A FEE FOR PROCESSING THESE REQUESTS.

APPROVED BY THE GOVERNOR APRIL 25, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2006.